

This letter describes the application of the Service Occupation Tax to a multi-service situation. See 86 Ill. Adm. 140.145. (This is a GIL.)

September 19, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 23, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I would like to request a written determination on the following situation.

My company operates retail stores in multiple states. Often, when we need a repair or maintenance job done at one of our retail locations, we hire a company to coordinate the work that needs to be done. The company we hire only coordinates the work. They do not actually perform any of the work. There is a wide variety of repair and maintenance work that is coordinated in this manner, including HVAC repair, plumbing and parking lot maintenance. We do not have contracts with any of these vendors, however, we do have agreements with many of them as to what their fees will be.

The transaction process is as follows:

We contact the vendor. The vendor hires a local company to go out to the retail location and do the necessary work. The local company bills the vendor. The local company often charges our vendor sales tax. The vendor sends us a bill which itemizes the amount charged by the local company and the vendor's fee.

The vendor's fee is listed as either 'management fee,' 'overhead and profit,' or a set 'mark-up.' It is usually either a flat fee or a percentage of the amount billed by the local company for the work.

We need to know whether the vendor's fee is subject to sales and/or use tax. Also, are we liable for sales or use tax on the portion of the bill attributable to the local company's repair work? If so, can we take a credit for any tax paid by our vendor to the local company? Also, will the taxability of the transaction be affected by whether the vendor has nexus in your state or not? Does the vendor's nexus status affect who is liable for the tax?

I have included copies of some past invoices to illustrate how these companies typically invoice us. I have verified that these companies are in business strictly to coordinate the repairs. They have no other involvement.

Thank you in advance for your assistance with this matter.

#### **DEPARTMENT'S RESPONSE:**

We apologize for the delay in responding to your letter. Please be advised that services that do not involve the transfer of tangible personal property are generally not subject to Illinois Retailers' Occupation Tax or related sales taxes. If tangible personal property is transferred incident to service, then the Service Occupation Tax applies. You have inquired concerning Service Occupation Tax and multi-service situations. When a serviceman contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain part or all of the product and services desired by the service customer. Depending upon whether the primary and secondary servicemen are registered or de minimus will determine at what point Service Occupation Tax or Use Tax will be incurred. Please see 86 Ill. Adm. Code 140.145 to determine the tax incurred in these situations.

The nature of the service contracts at issue here appear to involve construction contracts. For more information on the taxability of these transactions please see 86 Ill. Adm. Code 130.1940 and 130.2075.

For information on claims for credit, please see 86 Ill. Adm. Code 160.150. Please note that the Department will only allow a credit to the taxpayer who remitted the tax directly to the Department.

You have inquired concerning nexus. Please see General Information Letter ST 02-0269-GIL which discusses nexus and taxation.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk